

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

DAYTON AREA CHAMBER OF
COMMERCE *et al.*,

Plaintiffs,

v.

XAVIER BECERRA *et al.*,

Defendants.

Civil Action No. 3:23-cv-00156-MJN-PBS

Judge Michael J. Newman

Magistrate Judge Peter B. Silvain, Jr.

DEFENDANTS' UNOPPOSED MOTION FOR AN EXTENSION OF TIME

Defendants, having conferred with Plaintiffs, respectfully request a 14-day extension of time to file their reply brief. As good cause for this request, which Plaintiffs do not oppose, Defendants offer the following:

1. The briefing schedule in this case is currently governed by the Court's order of November 7, 2023, ECF No. 63, which granted Plaintiffs' (unopposed) motion to modify some of the deadlines in the Court's previous scheduling order, ECF No. 62.

2. Under that schedule, only one brief remains to be filed: Defendants' reply brief in support of their motion to dismiss or, in the alternative, for summary judgment. Currently, that reply brief is due on January 31. ECF No. 63.

3. Due to the press of other significant and time-sensitive litigation deadlines—some of which arose only after the Court's most recent scheduling order, and several of which arise in other litigation challenging the Medicare Drug Price Negotiation Program—Defendants respectfully request 14 additional days to prepare their reply brief in this case. For example, one of the undersigned government attorneys will also be representing the United States at a significant trial in the Northern District of Texas during the week of January 22, which was not scheduled until November 20. *See Texas v. Garland*, No. 5:23-cv-00034-H (N.D. Tex. Nov. 20, 2023) (order

setting trial and final pre-trial conference dates). The litigation team in this case also faces a January 26 deadline for a combined opposition and cross-motion for summary-judgment brief in the District of New Jersey, in *Novo Nordisk Inc. v. Becerra*, No. 3:23-cv-20814 (D.N.J.) (Medicare Drug Price Negotiation Program litigation). And one attorney on the government's litigation team will be presenting oral argument on cross-motions for summary judgment in the District of Delaware on January 31—the current deadline for Defendants' reply brief in this case—in *AstraZeneca Pharmaceuticals LP v. Becerra*, No. 1:23-cv-00931 (D. Del.) (Medicare Drug Price Negotiation Program litigation).

4. In addition, Plaintiffs' combined opposition and reply brief was 66 pages long, and included several arguments that have not previously been raised in this case, nor any of the other constitutional challenges to the Negotiation Program. ECF No. 90. An additional 14 days would thus allow sufficient time for necessary consultation and deliberation within the Executive Branch regarding the government's brief in this case of nationwide significance.

5. This modest extension of time will not prejudice Plaintiffs. This Court already denied Plaintiffs' motion for a preliminary injunction, ECF No. 55, on the timeline that Plaintiffs requested. Plaintiffs did not appeal that decision, nor file any other motion for time-sensitive relief. And the deadline for willing manufacturers to enter into pricing agreements with the Centers for Medicare and Medicaid Services is not until August 1, 2024. *See* 42 U.S.C. § 1320f(d)(5)(C).

6. For these reasons, Defendants respectfully request that their reply brief deadline be extended by 14 days, from January 31 to February 14.

7. This is the first request for an extension of this deadline, though the parties have previously filed motions seeking to modify the briefing schedule in other respects. *See* ECF No. 60 (Defendants' motion); ECF No. 62 (Plaintiffs' motion).

8. Before filing this motion, counsel for Defendants conferred with counsel for Plaintiffs, who reported that Plaintiffs do not oppose the relief requested in this motion.

9. A proposed order is attached.

Dated: January 16, 2024

Respectfully submitted,

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